



ETHICS COMMISSION AGENDA

**August 12, 2015
6:30 p.m.
Roseville City Hall
2660 Civic Center Drive**

- I. Call to Order
- II. Public Comment
- III. Approve Minutes of May 13, 2015
- IV. Group Discussion: Ethics Readings
- V. Discussion of 2016 Ethics Training
- VI. Discuss Ethics Tip
- VII. Other Business
- VIII. Adjourn



Administration Department

Memo

To: Ethics Commission
From: Patrick Trudgeon, City Manager
Date: August 6, 2015
Re: August 12, 2015 Ethics Commission Meeting

The Ethics Commission has several topics to cover at the August meeting. They include:

- **Group Discussion: Ethics Readings.** At the May meeting, the Commission asked that readings and articles of interest be brought forward for group discussion. Commissioner Van Driest forwarded an article regarding the recent employment of Representative Dan Schoen by Leafline Labs, a medical cannabis company. I have also included material regarding social media and government ethics. One item is a recap of a round-table discussion at the University of Santa Clara centered on government ethics and social media. The other item is guidance from the United States Office of Government Ethics about the use social media by government employees. While the material focuses on federal employees and regulations, there are some interesting points in the guidance.
- **Discuss 2016 Ethics Training.** At the May meeting, the Commission decided to discuss topics and speakers to consider for the 2106 Annual Ethics Training. Please come prepared to discuss any ideas you have for next year's session.
- **Ethics Tip.** Commissioner Lehman has prepared an Ethics Tip that will be presented at the meeting.

City of Roseville
Ethics Commission Meeting Minutes
Wednesday, May 13 2015

I. Call to Order

City Manager Trudgeon called the meeting to order at 6:30 p.m.

Members Present:

Norine Quick-Lindberg, Matthew Becker, Sheran Van Driest, and Todd Anderson. Ben Lehman arrived at 6:34 p.m.

Members Absent:

Others Present:

Patrick Trudgeon, City Manager; Jim Ericson, City Attorney Office

II. Oath of Office-Todd Anderson and Sheran Van Driest. City Manager Trudgeon gave the Oath of Office to Todd Anderson and Sheran Van Driest and welcomed them aboard.

III. Election of Officers. City Manager Trudgeon opened up the floor for nominations for Chair. Commissioner Becker moved, Commissioner Quick-Lindberg seconded to nominate Ben Lehman to serve as Chair of the Ethics Commission.

Nominations closed.

Ayes All. Motion passed. Ben Lehman was elected Chair of the Ethics Commission.

City Manager Trudgeon took nominations for Vice Chair. Commissioner Anderson moved and Commissioner Becker seconded to nominate Norine Quick-Lindberg as Vice Chair of the Ethics Commission.

Nominations closed.

Ayes All. Motion passed. Norine Quick-Lindberg was elected Vice Chair of the Ethics Commission.

Chair Lehman arrived at 6:34 p.m.

IV. Approve Minutes of February 11, 2015

Commissioner Becker moved to approve the February 11, 2015 minutes, seconded by Commissioner Quick-Lindberg.

Ayes All. Motion passed.

V. Recap of 2015 Ethics Training

City Manager Trudgeon gave a summary of the 2015 Ethics Training provided by City Attorney Mark Gaughan in April. Mr. Gaughan reviewed information about the Ethics Code, discussed ethical scenarios, walked through the process of filing an ethics complaint, and reviewed an actual ethics complaint from a few years ago. The training was well attended and was well received.

Commissioner Anderson felt it was very worthwhile and the scenarios were very informative. Commissioner Becker felt that the discussion of the Open Meeting Law was very important and should continue to be discussed in future Ethics Training. Commissioner Van Driest felt that attendees were very engaged and she like the review of the scenarios as well.

City Manager Trudgeon indicated that a follow-up survey of the participants was not done this year and apologized for not having it sent out. Mr. Trudgeon pledged that a follow-up survey will be done next year.

Mr. Trudgeon noted that the presentation was recorded and on the City website for persons not able to make the session to view the presentation.

The Commission discussed planning for next year's session. Commissioner Anderson suggested focusing the presentation on the use of social media and email. The Commission decided to have a group discussion at the August meeting about speakers and topics for the 2016 Ethics Training session. Chair Lehman asked that members bring ideas back for topics and speakers to the August meeting.

VI. Discuss Ethics Tip

Commissioner Becker provided an Ethics Tip regarding the ability of persons who are subject to the Ethics Code to ask the City Attorney to issue an advisory opinion. Individuals may ask for a formal opinion that is published or for an informal opinion which is communicated verbally to the requestor.

The Commission talked generally about the Ethics Tip process and the process of communicating the tip to commissioners, elected officials, and staff.

Commissioner Becker moved and Commissioner Van Driest seconded to approve and publish the ethics tip.

Chair Lehman volunteered to write the Ethics Tip for August.

VII. Other Business

City Manager Trudgeon stated that there has not been any ethics complaints forwarded to the City Manager's Office or to the City Attorney.

City Manager asked if there were any future topics for the Commission to consider. The Commission discussed bringing forward additional readings about ethical behavior for conversation at the next meeting. Chair Lehman asked the commission to forward materials to the City Manager.

VIII. Adjourn

Commissioner Becker move to adjourn the meeting at 6:52 p.m. and Commissioner Quick-Lindberg seconded.

Ayes All. Meeting Adjourned

Respectfully submitted,
Patrick J. Trudgeon
City Manager



Photo: Minnesota House

COTTAGE GROVE, Minn. (KMSP) -

State Rep. Dan Schoen, DFL-Cottage Grove, announced Tuesday that he's taking an unpaid leave of absence from his job as a Cottage Grove police officer to be a paid consultant for LeafLine Labs, one of two medical cannabis companies in the state.

"I'm not doing government affairs or lobbying, this is all about my background in law enforcement," he said.

Schoen, a co-sponsor of last year's medical marijuana bill, was an advocate for the recent legalization in Minnesota. When state officials were evaluating applications from vendors to manufacture medical marijuana, Schoen said he was approached to help LeafLine Labs find a Cottage Grove site if it were to be selected.

"They looked at other cities around the state and just like any other business, I advocated with the city to take a look here [Cottage Grove] and then they worked with the city," he said.

Schoen said his background as a police officer and previous experience as a paramedic makes him suited for the role, and also highlighted his position as a legislator.

"Because of the role I have as a legislator, I know the issue very well, and I know it inside out, and I think that would be beneficial to anybody in the business," Schoen said.

In his new position, Schoen will help open other clinics, design security procedures, plan transportation routes, and train staff. LeafLine has now tapped two people from the Capitol -- former health department official Manny Munson-Regala was named CEO last month. But Schoen said it's just a coincidence.

"This is medicine," Schoen said. "This is about taking care of people that are sick."

There will be 8 clinics in Minnesota where medical marijuana is dispensed. Minnesota Medical Solutions and LeafLine Labs will operate four each.

Source: Star Tribune

Government Ethics and Social Media: Issues and Challenges



(L-R: Jason Baker, Irina Raicu, and David Vossbrink)

By Caroline Jaffe-Pickett

The overriding theme from the January 31st roundtable on social media and government at The Ethics Center, is that of paradox. We have a multitude of ways to communicate with our constituents, but this is proving to be a double edge "digital sword." Ethical dilemmas and issues of transparency, accountability, and authenticity, were the focus for panelists Jason Baker, Irina Raicu, and David Vossbrink, before an audience of local elected officials from Silicon Valley and the San Francisco Bay Area.

The following 6 principal dilemmas were discussed:

***Public vs. Private**

In a culture where all tweets are archived in the Library of Congress, and enough has been written on Facebook privacy issues to fill a book, the public vs. private debate will be no doubt be with us for some time. Are there any truly "private" posts or, for that matter, private social media channels for elected officials, or is it simply a matter of time before that inevitable disparaging tweet published months ago suddenly reappears? While politicians can expect a loss of privacy as a right of passage in political success, a Facebook page for friends and family is not unreasonable expectation...or is it? While the delicate balance between public and private sorts itself out in social media's new deck of cards, caution and common sense are key. As Vossbrink commented: "The best advice when posting can be gleaned from Microsoft's famous saying: 'Don't be stupid.'"

***Speed vs. Accuracy**

In this age of fast-forward news consumption, constituents expect rapid turnaround on the issues from their elected officials. The need for speed increases the margin for error, while the cost of being wrong raises the stakes. Many citizen journalists often "tweet without thinking," so elected

officials need to set the example. Online and real-time, they must communicate efficiently and responsibly, handle crisis communications deftly, and be assertive in posting the facts, ensuring they are consistent throughout.

***Communication vs. Debate**

The social media toolkit offers an "embarrassment of riches" for communicating local news and updates. But is it appropriate for elected officials to go beyond that and debate constituents online? Opinions varied on the value and appropriateness of extended engagement. Government officials should and indeed must convey credibility, authenticity, and clarity on the issues and respond to their constituents' needs, without getting mired in over communication and giving in to social media's Achilles Heel: the ease of publishing without permissions or filters.

***Quality vs. Quantity**

"With social media, you can get too plugged in...you still need to talk to people," commented Baker, leading to discussion of the 3 C's introduced by Raicu: "Are we sacrificing 'Conversation' for mere 'Connection?'" she asked. And where is Communication in all this, which was the point in the first place? Social media, some experts argue, has made us superficial, resulting in distraction over discourse, and a disturbing new trend in online aggression, with bullying and – dare we say—lying, becoming increasingly commonplace. "If social media allows us to listen better, then it's profoundly ethical. Otherwise, we are wasting it," added Raicu.

***Social Policies vs. First Amendment**

When staff members post on social media, are they representing themselves or their agencies? Administratively, it's a fine but critical distinction. We have the right to our opinions, but there are guardrails and increasingly sophisticated frameworks for behavior. In government offices, management is fine-tuning disclaimers and social policies on everything from tweets, to email retention procedures, to dual functioning digital gadgets for work and home, to record-keeping in public meetings --particularly in light of *The Brown Act*. Vossbrink, for example, keeps the distinction between public and private clear, only posting on his organization's social networks and cautioning against any blurring of the public-private persona.

***Consistency vs. Access**

The silent majority can easily be displaced by the noisy minority when it comes to social media, creating a distorted political landscape in which the opinions of very few can dominate. Consistency in message and in two-way dialogue with constituents, both online and offline, is key to balanced communication in government affairs and in crossing the digital divide.

Ironically, even in this age of memes, hash tags, and vlogs, a surprising number of voices are not being heard--at least not in the latest tweet, blog post, or Facebook update. Many individuals and entire communities do not have or may not want access to social media. And so the age-old question in government still reigns: *how do we become a more representative democracy if the majority don't participate?* In looking toward the future of real world politics, we need to

balance our digital selves with our humanity, and hope that the famous epithet "*till human voices wake us and we drown*," doesn't become a self-fulfilling prophecy.

Jason Baker has been a member of the Campbell City Council since 2008. He earned his B.A. in Political Science at the University of California at Davis in 1995, and received his J.D. Cum Laude from Santa Clara University School of Law in 2000. Irina Raicu, Internet Ethics Program director at the Ethics Center, is a Certified Information Privacy Professional and a graduate of SCU's School of Law. She also has a master's degree in English and American Literature from San Jose State University. David Vossbrink, a Stanford University graduate, is Director of Communications for the City of San Jose, and has worked in the field of local government public information for four decades.

Caroline Jaffe-Pickett is Assistant Director of Communications and Social Marketing at the Markkula Center for Applied Ethics.

February 2014

Source: http://www.scu.edu/ethics/practicing/focusareas/government_ethics/roundtable/social-media/

Ethics office issues guidance on use of social media

The Office of Government Ethics issued a new guidance aimed at clarifying policies related to the use of social media by executive branch employees.

- By FederalSoup Staff
- Apr 17, 2015

The Office of Government Ethics issued a new guidance aimed at clarifying policies related to the use of social media by executive branch employees.

The new legal advisory comes in the wake of a growing volume of inquiries from agencies concerning employees' personal use of social media in light of their obligations under the Standards of Ethical Conduct and agencies' own usage policies.

The new [guidance](#) examines a half-dozen topics in depth, including:

- Use of government time and property;
- Reference to government title or position, and appearance of official sanction;
- Recommending and endorsing others on social media;
- Seeking employment through social media;
- Disclosing nonpublic information; and
- Personal fundraising.

The advisory also looks at the issue of official social media accounts that are used for conducting agency business, which may be subject to other agency directives, regulations and policies.

OGE said that "in light of the ever evolving nature of social media," the advice contained in the guidance is "not intended to be comprehensive," and that the office expects to issue more guidance in the future that takes up additional questions related to social media.

Source: <http://federalsoup.com/Articles/2015/04/17/Ethics-office-issues-guidance-on-use-of-social-media.aspx>

UNITED STATES OFFICE OF GOVERNMENT ETHICS



April 9, 2015
LA-15-03

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
General Counsel

SUBJECT: The Standards of Conduct as Applied to Personal Social Media Use

Use of social media has become prevalent among Federal executive branch employees and agencies. The U.S. Office of Government Ethics (OGE) is aware that agency ethics officials have an interest in understanding how the Standards of Ethical Conduct for Executive Branch Employees (Standards of Conduct), 5 C.F.R. part 2635, apply to the use of social media. This interest is reflected in the increased volume of questions that OGE receives from various agencies seeking advice in this area.

As an initial matter, the Standards of Conduct do not prohibit executive branch employees from establishing and maintaining personal social media accounts. As in any other context, however, employees must ensure that their social media activities comply with the Standards of Conduct and other applicable laws, including agency supplemental regulations and agency-specific policies. To assist employees and agency ethics officials in this endeavor, OGE is providing the following guidance regarding issues that agency ethics official have frequently raised concerning employees' obligations under the Standards of Conduct when using social media.¹

1. Use of Government Time and Property

When employees are on-duty, the Standards of Conduct require that they use official time in an honest effort to perform official duties. *See* 5 C.F.R. § 2635.705. As a general matter, this requirement limits the extent to which employees may access and use their personal social media

¹ Employees should remain aware that other statutes and regulations outside of OGE's purview may further limit their use of social media. For example, the Hatch Act, 5 U.S.C. § 7321, *et seq.*, limits the extent to which executive branch employees may use social media to engage in certain political activities. *See* U.S. Office of Special Counsel, *Frequently Asked Questions Regarding the Hatch Act and Social Media*, April 4, 2012, available at: <https://osc.gov/Resources/Social%20Media%20and%20the%20Hatch%20Act%202012.pdf>

accounts while on duty. The Standards of Conduct also require employees to protect and conserve government property and to use government property only to perform official duties, unless they are authorized to use government property for other purposes. *See* 5 C.F.R. § 2635.704. For example, under the Standards of Conduct, a supervisor may not order, or even ask, a subordinate to work on the supervisor's personal social media account. Coercing or inducing a subordinate to maintain the supervisor's personal account would amount to a misuse of position and, if done on official time, a misuse of official time. The same would be true if the supervisor were to have a subordinate create content for the supervisor's personal account, even if the subordinate were not involved in uploading the content to that account. 5 C.F.R. §§ 2635.702(a), 2635.705(b).

Where agencies have established policies permitting limited personal use of government resources by their employees, those policies control what constitutes an authorized use of government resources. *See, e.g.* OGE Informal Advisory Opinion 97 x 3. In some cases, such "limited use" policies may authorize employees to access their personal social media accounts while on duty.

2. Reference to Government Title or Position & Appearance of Official Sanction

A question that frequently arises is the extent to which employees may reference their official titles on their personal social media accounts. In general, the Standards of Conduct prohibit employees from using their official titles, positions, or any authority associated with their public offices for private gain. 5 C.F.R. § 2635.702. The Standards of Conduct also require that employees avoid using their titles or positions in any manner that would create an appearance that the Government sanctions or endorses their activities or those of another. 5 C.F.R. §§ 2635.702; 2635.807(b).²

Employees' use of personal social media ordinarily will not create the impermissible appearance of governmental sanction or endorsement which would be prohibited under § 2635.702(b). An employee does not, for example, create the appearance of government sanction merely by identifying his or her official title or position in an area of the personal social media account designated for biographical information. *See e.g.* OGE Legal Advisory LA-14-08; OGE Informal Advisory Opinion 10 x 1.

In evaluating whether a reference to an employee's official title or position on social media violates the Standards of Conduct, the agency ethics official must consider the totality of the circumstances to determine whether a reasonable person with knowledge of the relevant facts would conclude that the government sanctions or endorses the communication. *See, e.g.* 5 C.F.R. §§ 2635.702(b); 2635.807(b); OGE Legal Advisory LA-14-08; OGE Informal Advisory Opinion 10 x 1. Relevant factors for agency ethics officials to consider in making the determination include:

² Agency supplemental regulations may place further limitations on employees' use of title or position, or may impose additional requirements such as mandating the use of a disclaimer.

- Whether the employee states that he or she is acting on behalf of the government;
- Whether the employee refers to his or her connection to the government as support for the employee's statements;
- Whether the employee prominently features his or her agency's name, seal, uniform or similar items on the employee's social media account or in connection with specific social media activities;
- Whether the employee refers to his or her government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee's official duties;
- Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the employees' social media activities; or
- Whether other circumstances would lead a reasonable person to conclude that the government does not sanction or endorse the employees' social media activities.

Ordinarily, an employee is not required to post a disclaimer disavowing government sanction or endorsement on the employee's personal social media account. Where confusion or doubt is likely to arise regarding the personal nature of social media activities, employees are encouraged to include a disclaimer clarifying that their social media communications reflect only their personal views and do not necessarily represent the views of their agency or the United States. A clear and conspicuous disclaimer will usually be sufficient to dispel any confusion that arises. *See* OGE Legal Advisory LA-14-08.

3. Recommending and Endorsing Others on Social Media

Social media networks, particularly those focused on job seeking, sometimes allow users to recommend or endorse the skills of other users. The Standards of Conduct permit employees to use social media to make such recommendations or endorsements in their personal capacity. It is not a misuse of position for employees to provide such endorsements merely because they have provided their official titles or positions in areas of their personal social media accounts that are designated for biographical information.

OGE is aware that at least one social media service automatically adds a user's name, title, and employer to any recommendation that the user posts regarding a job seeker. In any such case where title and employer name are added automatically, OGE does not consider a

recommendation to constitute a misuse of position because the recommendation is readily understood by users of the social media service to be personal, rather than official, in nature. An employee should not, however, affirmatively choose to include a reference to the employee's title, position, or employer in a recommendation, except where 5 C.F.R. § 2635.702(b) expressly permits such references.

4. Seeking Employment Through Social Media

The basic provisions governing seeking employment are set out in subpart F of the Standards of Conduct. For these purposes "seeking employment" includes not only the kinds of bilateral employment negotiations that would implicate 18 U.S.C. § 208, but also certain unilateral expressions of interest in employment by the employee. Specifically, in addition to actual negotiations, as described in section 2635.603(b)(1)(i), seeking employment also includes unsolicited communications by the employee regarding possible employment, as described in section 2635.603(b)(1)(ii), and any response by the employee, other than rejection, to an unsolicited overture from a prospective employer, as described in section 2635.603(b)(1)(iii). See OGE Informal Advisory Opinion 04 x 13.

Employees who are seeking or negotiating for employment through social media must comply with the applicable disqualification requirements of 5 C.F.R. § 2635.601, *et seq.*, 18 U.S.C. § 208, and any additional requirements found in agency supplemental regulations. Public financial disclosure filers who are negotiating or have an arrangement concerning future employment or compensation also must comply with the notification requirements found in section 17 of the Stop Trading on Congressional Knowledge Act of 2012. See 5 U.S.C. app. § 101, note; OGE Legal Advisories LA-13-06 and LA-12-01.

An employee is not considered to be seeking employment with any person or organization merely because the employee has posted a resume or similar summary of professional experience to the employee's personal social media account. Likewise, an employee is not considered to be seeking employment merely because a person or organization has viewed the employee's resume on that social media account or has sent an unsolicited message, including one containing a job offer, to the employee. An employee who receives an unsolicited message or job offer is seeking employment with the sender only if the employee responds to the message and the employee's response is anything other than a rejection. 5 C.F.R. § 2635.603.

An employee will be considered to be seeking employment with a person or an organization if the employee contacts that person or organization concerning future employment. In the age of social media, there are a multitude of ways that an employee might contact a prospective employer and thereby trigger the seeking employment rules. For example, an employee would trigger the seeking employment rules by sending a message directly to the organization, uploading a resume or application to the prospective employer's social media account for recruiting employees, or otherwise targeting the organization through a social media communication.

5. Disclosing Nonpublic Information

The Standards of Conduct prohibit employees from disclosing nonpublic information to further their private interests or the private interests of others. *See* 5 C.F.R. § 2635.703. This prohibition applies without regard to the medium used for the unauthorized disclosure. In addition to the Standards of Conduct, other statutes and regulations prohibit the disclosure of specific categories of nonpublic information, such as classified or confidential information. Employees must follow the rules regarding the disclosure of nonpublic information found in the Standards of Conduct and all other applicable rules when using social media. The Standards of Conduct generally do not prevent employees from discussing or sharing government information that is publicly available. Employees may not, however, accept compensation for statements or communications made over social media that relate to their official duties. *See* 5 C.F.R. §§ 2635.807(a); 2635.703.

6. Personal Fundraising

Employees may use personal social media accounts to fundraise for nonprofit charitable organizations in a personal capacity, but they must comply with 5 C.F.R. § 2635.808, the section of the Standards of Conduct that covers fundraising. As a general rule, fundraising solicitations over social media are permissible so long as the employee does not “personally solicit” funds from a subordinate or a known prohibited source. *See* 5 C.F.R. § 2635.808(c)(1).

Fundraising requests over social media are potentially visible to a wide audience of followers and connections. An employee who posts or publishes a general fundraising announcement or request over social media has not “personally solicited” any prohibited source or subordinate merely because the employee is connected with the prohibited source or subordinate through the social media network. The same is true even if the prohibited source or subordinate views, comments on, or responds to the post. However, an employee may not respond to inquiries posted by prohibited sources or subordinates in reference to the fundraising request. Furthermore, an employee may not specifically reference, link to, or otherwise target a subordinate or known prohibited source when fundraising over social media. An employee doing so will be considered to have “personally solicited” that person in violation of 5 C.F.R. § 2635.808(c)(1). *See* OGE Informal Advisory Opinion 93 x 19; OGE Informal Advisory Opinion 93 x 8.

Additionally, employees may not use their official titles, positions, or authority associated with their positions to further fundraising efforts. *See* 5 C.F.R. § 2635.808(c)(2); OGE Informal Advisory Opinion 96 x 2. Employees are not considered to have used their official titles, positions, or authority associated with their positions to further fundraising efforts merely because they have provided this information in areas of their personal social media accounts designated for biographical information.

7. Official Social Media Accounts

Many Federal agencies maintain one or more official social media accounts for use in conducting official business. Subject to applicable legal authorities, each agency determines the

purposes for which its official accounts may be used. *See, e.g.* OGE Informal Advisory Opinions 93 x 6 and 93 x 24. When employees use these official accounts, they must do so in accordance with applicable agency directives, regulations, and policies. *See* 5 C.F.R. § 2635.704(a); OGE Informal Advisory Opinion 97 x 3. Put simply, official accounts are for official purposes.

OGE encourages agencies to adopt policies indicating which employees are authorized to access official accounts and defining the authorized uses for those accounts. Agency officials responsible for social media accounts may wish to visit the General Services Administration's online Federal Social Media Community of Practice and Social Media Registry at <http://www.digitalgov.gov/>.

Additional Information

In light of the ever evolving nature of social media, the foregoing advice is not intended to be comprehensive. OGE expects to issue additional guidance in the future addressing questions outside the scope of this Legal Advisory. Designated Agency Ethics Officials with questions regarding the application of the Standards of Conduct to social media may contact their assigned OGE Desk Officers.